



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,488	11/14/2005	Toshimichi Morikoshi	1004334.003US (4439-4033)	6831
85775	7590	12/24/2009	EXAMINER	
Locke Lord Bissell & Liddell LLP Attn: IP Docketing Three World Financial Center New York, NY 10281-2101			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER
			1651	
			NOTIFICATION DATE	DELIVERY MODE
			12/24/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptopatentcommunication@lockelord.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/536,488	Applicant(s) MORIKOSHI ET AL.	
	Examiner DEBBIE K. WARE	Art Unit 1651	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: None.
 Claim(s) objected to: None.
 Claim(s) rejected: 10, 12, 15, 16, 18 and 19.
 Claim(s) withdrawn from consideration: 11 and 17.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/DKW/
Deborah K. Ware
Examiner
Art Unit: 1651

/David M. Naff/
Primary Examiner, Art Unit 1657

Continuation of 11. does NOT place the application in condition for allowance because: The argument that the cited Yokomizo reference is silent with respect to beta-1,4-mannobiose is noted. However, Applicants' own specification discloses at page 8, lines 9-12, that palm kernel meal contains beta, 1,4-mannose, hence the beta 1,4 bond is present. Also note col. 3, line 39 of Yokomizo patent. Furthermore Yokomizo clearly disclose palm kernel meal and a mannan degrading enzyme which encompasses hemicellulase, tradename GM "AMANO" as disclosed by Applicants' own specification at page 8, lines 26-27. Yokomizo further discloses palm kernel meal containing 1-30 weight % mannose having the beta 1,4 bond, note col. 4, lines 66-67. The mannobiose, having the Beta-1,4 bond disclosed by Yokomizo is intrinsic to the substrate source material, palm kernel meal, of which the enzyme is acting upon in the claimed method and cited disclosure. Furthermore, Applicants' claims are not limited to the specific dissaccharide per se but to a beta-1,4-mannobiose-containing composition of which is palm kernel meal as disclosed by the Yokomizo patent. It would have been inevitable to obtain beta-1,4-mannobiose composition in an effective amount of at least 3% by weight of the dry matter portion, or even 1% by weight of the same, as claimed since reacting the identical source substrate with the identical enzyme, will produce the same identical product in effective amounts; both are disclosed by Yokomizo as discussed supra. Palm kernel meal contains 29 to 38 weight % of mannan, thus, effective amounts of mannose or its oligosaccharides, e.g. dissaccharides, can be produced through enzyme hydrolysis, note col. 3, lines 1-5. The reference clearly teaches that Salmonella is inhibited using an enzymatically degraded source of mannan, note col. 2, lines 25-35. Therefore, the reference anticipates the claimed methods of using a composition to inhibit Salmonella because the reference teaches the identical substrate and enzyme source to be reacted together in a blend of animal feed and the presence of beta-1,4-mannobiose in an amount of at least 3% by weight of the dry portion is inevitable. The argument regarding comparative data and results thereof, is not persuasive because Applicants' claims are not limited to the results in the specification and the results obtained by Yokomizo are time sensitive with respect to reaction time of the enzyme and substrate. The declaration has not been considered for reasons noted above. Further, the prior art composition is shown to be effective for reducing Salmonella. In addition, Applicants' own arguments suggest that they too realize that beta-1,4-mannobiose will be produced even though they suggest that it will be produced as a side product, note page 4, end of second full paragraph of the response after final. The declaration is based upon opinion and is acknowledged but not considered at this time since it does not provide a showing of good and sufficient evidence of necessity and it was not presented earlier.